

# An Address.

To the PEOPLE of the STATE of VERMONT.

*Respected Fellow Citizens,*

**Y**OUR Council of Censors, elected in the month of March last, agreeable to the constitution, having accepted their appointment and duly proceeded to the examination of the various important concerns committed to their charge, submit the following as the result of their deliberations to you, the people, as the true fountain of government, and the original source of delegated power.

The council after due deliberation on the expediency of revising and amending the constitution, have ultimately concluded not to recommend any alterations; and although every member of this board has manifested an opinion, that alterations might possibly be made, for the greater security of our inestimable rights, yet the present convulsed state of political opinion, renders the present an unsuitable period for entering on such an important business.

“To enquire whether the constitution has been preserved inviolate, in every part, during the last septenary, and whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution; also, to enquire, whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed,” are the

truly painful but assigned duties of this board. On the one hand to touch the character and conduct of those public functionaries, in whom the people have reposed the highest confidence, is an irksome and undesirable business, yet on the other, to admit any man, or set of men in community, to rule and govern without limit, controul, or accountability, is an evil of such magnitude, as to strip the duty of its disagreeable tints, by evincing its absolute necessity.

Public officers are thus arraigned before the tribunal of the sovereign people, whose servants they are, and by whom alone they are invested with certain, degrees of power.

Under these impressions we have cheerfully attended to our duty, and with diffidence of our own opinions, and respect for the abilities of those who have administered the government, present the following.

That in examining the procedure of the legislature during the last septenary, we are of opinion, that except in a few instances, they have conducted public concerns agreeable to the rules prescribed by the constitution. The exceptions which we advert to are as follows, viz.

In the sixth section of the 58th chapter of the laws, entitled "*An act directing the mode of elections,*" &c. passed October 26th 1796, the supreme court are empowered to disfranchise a freeman for *any evil practice which shall render him notoriously scandalous.* This part of the section, independent of its vague and uncertain meaning, is against the letter and spirit of the eighth article of the bill of rights, and the 34th section of the form of government, the former only declares *That all elections ought to be free and without corruption,* the latter, points out what constitutes the crime of bribery in elections, and the punishment therefor, leaving to the legislature the right of adding farther

penalties for the crime, as therein ascertained.——

The Council are fully of opinion, that the framers and adopters of the constitution, contemplated to preserve inviolate the right of suffrage to every free-man, unless he should in fact forfeit the right, by acting wickedly and corruptly, relating only to that inestimable privilege.

The 9th section of the 15th chapter of the laws, entitled *An Act relating to fines and forfeitures, &c.* passed by the legislature in March, 1797, subjects persons acquitted by a jury in criminal prosecutions, to pay cost in certain cases, at the discretion of the court or justice of the peace before whom the trial is had.

This law in the opinion of this board is an infringement of the 10th section of the bill of rights, which declares, *That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his offence, to be confronted with the witnesses, to call for evidence in his favor, and to have a speedy public trial by an impartial jury of his country, without the unanimous consent of which jury he cannot be found guilty.*

It will be clearly discerned, by every candid and reflecting mind, that the power here given, does not subject the citizen to any kind of penalty in a criminal prosecution, where trial is had by jury, unless such jury first unanimously declare him guilty.

To suppose the free citizens of this state to be subjected to any pains, penalties, or cost, for the same charge on which they had been acquitted, is not only a violation of the constitution, but inconsistent with the principles of justice and humanity.

The 51st chapter, entitled, an act to support the gospel, passed Oct. 26, 1797, excepting the first and last sections, ought to be repealed.

This act the council are sensible, embraces a subject of the most important and delicate concern to community and to individuals ; they therefore entered upon the consideration of it with the utmost precaution, and examined it with care : yet they could not pass it in silence, the duties enjoined on them by the constitution requiring, that they should attend to the infringements of the rights of individuals, as well as of distinct classes of citizens.

The third article in the bill of rights, says,

*That all men have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God : and that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship ; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.*

The framers of the bill of rights, by this article, indisputably meant to convey the idea, that man necessarily possesses natural knowledge, or simple reason, which they have designated by the name of conscience. This they declare is inalienable, clearly conveying the idea, that one man cannot convey to another man his individual right of worshipping God

according to the dictates of his conscience, any more than he can convey to him his right of breathing ; for it is impossible in the nature of things, that one person can be profited intellectually, by a conveyance to him of another person's right of thinking ; and if these premises are correct, it certainly follows, that the rights of conscience cannot be deputed ; that religion is a concern personally and exclusively operative between the individual and his God ; and that whoever attempts to control this sacred right, in any possible way, does it by usurpation and not by right.

The second clause of the third article, as above recited, says, " No man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister contrary to the dictates of his conscience." Here again conscience is made the only criterion by which a man can possibly be bound, in the execution of such designs ; in opposition to which, the law we hereby propose to have repealed, expressly binds the citizens of this state, indiscriminately, to erect and support places of public worship, and to maintain ministers, contrary to this clearly defined right, provided they are so unfortunate as to be in the minority in any town, who may act under the authority of this law, and who are not at the time of taking the vote, possessed of a certain prescribed certificate.

Could not the legislature as well declare, that the inhabitants of every town in this state, should build a house for public worship, and settle and support a congregational minister, provided a certain number thereof were not possessed of a certificate, that they supported a minister of a different denomination ? This would only support the same ground that the law contemplates, as in both cases the minority are

only subjected by the majority. But in no case have civil power any constitutional right to interfere in religious concerns, except to bind persons or communities to discharge their civil contracts, individually entered into, for the mutual support of religious social worship.

In consonance with these ideas, the article before recited, expressly declares, that no authority can, or of right ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control the right of conscience, in the free exercise of religious worship.

The foregoing sections and part of sections of laws, are in the opinion of the council, repugnant to the Constitution ; and in enacting them into laws, the legislature have assumed upon themselves, and exercised greater powers, than they are entitled to by the Constitution. And under this impression the council recommend the repeal of each and every of the above recited clauses, to restore community to their inestimable constitutional privileges, and prevent the establishment of precedents dangerous to, and subversive of, the dearest rights of freemen.

In examining the journals of the house of representatives, the council are happy to say, that they have found the proceedings of that house, a few instances excepted, regular and proper. The admission of Stephen Buchannon to a seat, in the house, of representatives in Oct. 1796, who was not elected on the day pointed out by the Constitution, they deem unconstitutional, as there is no article in that instrument to warrant the house in such a procedure.

The 8th section of the constitution declares,

Art. 8. *That all elections ought to be free and without corruption, and that all freemen having a sufficient, evident common interest with, and attachment to the commu-*

ality, have a right to elect officers, and be elected into office, agreeably to the regulations made in the constitution.

The 9th section of the constitution defines the powers of the legislature, the latter clause of which is in the following words, "and they shall have all other powers necessary for the legislature of a free and sovereign state: but they shall have no power to add to, alter, abolish, or infringe any part of this constitution."

We likewise find on the journals of the house repeated instances of resolutions, passed by the house, authorizing different towns on various occasions, to elect representatives to represent them in the general assembly, and that in consequence of such resolutions, representatives have been elected on days not appointed for their election by the constitution, who have taken their seats accordingly.

The council are of opinion, that the same reasons which were offered in the case of Mr. Buchannon, will apply with equal force in these instances respectively.

From the journals of October 1799, the following extracts (being the whole that relate to the subject) are selected and offered to the public with some comments thereupon.

In General Assembly, October 22d, 1799.

The following communication from the honorable Council of Censors, was laid before the house, to wit :

STATE OF VERMONT, }  
Windsor, Oct. 21, '99. }

*To the honorable General Assembly now in session at Windsor.*

WHEREAS the Council of Censors now sitting at Windsor, in their enquiries do find, that William Coley, esq. while high sheriff of the county of Bennington, did wittingly and willingly take and receive

for summoning the grand and petit jurors, to serve before the supreme court at their session holden at Manchester, in the month of February last, greater fees for his said services, than allowed by the laws of the state, under color of his said office of sheriff, as aforesaid.

And further that the said William Coley, esq. while high sheriff of said county, did wittingly and willingly take and receive, for summoning the petit jurors to serve before the supreme court holden at Manchester by adjournment, in the month of June last, greater fees for said services, than allowed by the laws of the state, under color of his said office of sheriff, as aforesaid.

Which taking and receiving said fees, as aforesaid, is contrary to, and in violation of the laws and Constitution of the state.

The Council of Censors do therefore in pursuance of their duty, and by the authority vested in them, order, that the said William Coley, sheriff as aforesaid, be impeached before the Governor and Council of the state, for the mal-administration of his office as aforesaid.

And that this order be signed by the president, and countersigned by the secretary of this board, and by him transmitted to the speaker of the General Assembly, with the names of the witnesses, to support the charges of mal-administration. (Signed)

*By order of the Board.* MOSES ROBINSON, Pres.  
DAVID FAY, Secretary. \*

\* To this communication the council annexed the following names as witnesses necessary to support the impeachment, viz.  
Sam'l. Robinson 2d, of Benning. Gideon Ormsby, Manchester,  
ton, with the original venire. John Shumway, Dorset,  
David Robinson, Bennington, David Sheldon, Rupert,  
Lemuel Bradley, Sunderland, Tytus Hurd, Arlington.  
N. B. This does not appear on the records of the house.



October 26th, 1799.

The house went into the consideration of the foregoing order. On motion,

The house resolved itself into a committee of the whole house, upon the subject of the laid communication, and after sometime spent therein, Mr. Speaker resumed the chair, and Mr. Gideon Olin reported, that the committee had, according to order, had the laid communication under consideration, and do recommend to the house to adopt measures to carry into effect the laid order of the council of censors.

Whereupon, On motion,

*Ordered*, That the house do accept the said report.

October 30th, 1799.

The house went into further consideration of the order from the Council of Censors.

On motion, *Resolved*, That the said communication be referred to a committee consisting of one member from each county, to state facts in detail, and make report to the house :

And a committee was appointed, of Mr. Richard Hurd, Mr. Blake, Mr. Hammond, Mr. Zebina Curtis, Mr. Chipman, Mr. Johnson, Mr. Hay, Mr. Bean, and Mr. Francis Davis.

November 2d, 1799.

*The committee to whom was referred the order of the Council of Censors, relative to the impeachment of William Coley, made report that the said William Coley, by himself and his deputies, summoned the grand and petit jurors to attend the supreme court at Manchester, in February last, and that he in like manner summoned the petit jurors to attend the said supreme court in June last, That he the said Coley, exhibited his charges to the judges of the supreme court, who allowed the same, amounting in the whole to thirty-eight dollars, twenty-seven cents, That it was observed by said Judges, on examining his account for said services, that his charges were high, to*

which the said Coley replied, that he had been obliged to travel several times into some of the towns, before he could procure a draught of jurors. That on a computation, we find the said sheriff's fees for travel, computing from the place of service on each juror to place of return, amount to twenty-five dollars, seventy-four cents. That we have no proof on what number of said jurors, service was made by copy, but computing only sixteen of forty-two to have been served by copy, the amount would have been, four dollars, twenty three cents. That we have no absolute proof for what number of jurors the said venire issued, or on what number it was served, but as the law required that the venire for each petit jury should issue for the number of fifteen, we are to presume that the venire did issue for that number, and that service was made accordingly ; And that the service on the said six other jurors not before estimated, on an average with those before estimated, would amount to three dollars and sixty six cents ; that the amount of fees for extra travel as before stated, and which have been proved to us is four dollars twenty eight cents ; that the amount of actual travel to the several town clerks and justices, when he did make a draft of jurors, is four dollars ninety eight cents ; that we have no positive proof of any other extra travel ; but we fully believe the said Coley did go twice to Sandgate, and once to Dorset, before he could obtain a draught of jurors ; which would amount to two dollars thirty four cents, amounting in the whole to forty five dollars, twenty three cents the amount of the items contained in the above statements for which we have no positive proof, is six dollars, which deducted from the above sum, there remains, thirty nine dollars twenty three cents.

We further report, that on examination of the treasurer with his books, the whole sum that has been paid to said Coley, for his services the year past, is fifty three dollars and sixty five cents ; which includes his own person-

al attendance, on the several terms of the Supreme court, in February and June last, as also his fees for removing a prisoner from Bennington to Manchester. From all which it fully appears to the committee, that the charges exhibited against the said Coley, are wholly unsupported.

(Signed)

RICHARD HURD, for committee.

The said report being read, was accepted.

On motion,

Resolved, That on examination of the charges exhibited to this House against William Coley, Sheriff of Bennington county, by the Council of Censors, in their order of the 21st October, 1799, they appear to be wholly unsupported. And that the said order be dismissed.

On motion,

Resolved, That a committee be appointed to examine the Fee-Bill, and to report to the House what alterations, if any, are necessary to be made in the said bill.

And a committee was appointed of Mr. Wright, Mr. Butler, and Mr. Shumway.

November 5, 1799.

The committee appointed to examine the Fee-Bill, &c. Made Report,

That upon examining the law, are of opinion it cannot be construed so as to give an officer more than six cents per mile, for actual travel for serving any one process, altho' several persons may be named in it, and served on the same, except it be a forced construction. Therefore, are of opinion that no alteration ought to be made.

[Signed]

JOSIAH WRIGHT, for committee.

The foregoing is a true copy from the Journals.

Examined

Samuel C. Crafts, clerk of G. A.

From this record it appears, that the board of Censors ordered, that William Coley, sheriff of Bennington county, should be impeached before the governor and council, for taking in three instances, greater fees than were allowed by law.

The 43d section of the constitution invests the Council of Censors, among other important powers, with the right to order impeachments.

The 24th section of the constitution makes it the duty of the house of representatives to impeach, and the governor or lieutenant governor and council, to hear, try, and determine impeachments.

These premises will warrant the conclusion, that when the council of censors shall order an impeachment, the house of representatives are the only board or constituted authority, to whom such order can be directed ; and who, on receiving such order, are constitutionally bound to proceed to transmit to the governor and council articles of impeachment, who are to cause the accused to be notified, to proceed to the examination of the facts, and to render sentence accordingly ; in which business the house of representatives are by no means invested with concurrent authority with the governor and council, or with discretionary power in the execution of orders constitutionally directed to them. But if the transactions of the house of representatives as recorded on their journals, are just and proper, the conclusion must be, that the council of censors have a right to order the house of representatives to impeach, but that the house so far from being obliged to comply with the orders, can reject, dismiss, or supercede them at pleasure.

To admit that the house have a right to investigate the facts on which impeachments are founded, when ordered as aforesaid, admits the further idea, that they have the right of deciding whether they will comply

with the order of the council of censors, constitutionally directed to them, or not.

It will not be contended that the house have a right to try impeachments, their power only extending, when ordered as aforesaid, to the act of impeaching : But in the present existing instance, the house, unconstitutionally entered upon the trial of facts, in an important cause, and made a decision in the case.

In further examining the transactions of the house on this subject, we are again led to enquire, what principles governed them in their determinations in the case referred to. In the first place they go into committee of the whole on the order from the council of censors, and the chairman reports a recommendation to the house to adopt measures to carry it into effect, which report was accepted. Thus far the two bodies progressed constitutionally. The house next proceeded to appoint a select committee, to report in detail the facts on which the order of the council of censors was made. This procedure was unconstitutional, and inconsistent with their former conduct on the subject ; for there appears no motion or resolve on record, for reconsidering the previous order of the house on the report of the committee of the whole, which the procedure of the select committee not only tended to disannul, but to render the legal order of the council of censors void.

Thus the select committee reported contrary to the report of the committee of the whole ; the report of the committee of the whole is disannulled by the acceptance of the report of the select committee, a legal order from a constituted board, contemned by a body constitutionally obliged to receive and execute such orders, and the house of representatives assume the power to hear and determine the facts on which an order of impeachment was predicated.

The report of the select committee so made and accepted, embraces several other objects worthy of attention. In the first place the three crimes alledged against Mr. Coley (either of which, if true, were sufficient to have founded a conviction upon) are, by the assembly consolidated; and by adopting an entirely new and unprecedented mode, allowing separate travel to each juror, with travel and extra travel to the clerks, they have made up and allowed to Mr. Coley thirty nine dollars and twenty three cents. Which allowance was exorbitant and inconsistent with legality, inconsistent with true calculation on their own acknowledged plan, and even exceeded Mr. Coley's charge, as will appear conspicuous by the following statement.

For summoning the petit jury, in Feb. term, 1799.		
Legal charge, as by rule adopted by the supre. court. for actual, viz. circuitous travel, to jurors & cl'ks.	Separate travel truly calculated, on the assembly's own plan.	Coley's charge for the same, service, as endorsed on the venire.
66 miles travel, at 6 cts. per mile. is     dol. 3,96	80 miles travel at 6 cents per mile, is     4,80	dol. 8,31
Service by reading,             72	Service by reading, cts. 72	
Total, dols.     4,68	One third of the sum allowed for travel to clerks, dol. 3,08	
	Total, dols. 8,69	

For summing the grand jury, February term 1799.

Legal charge :      Separate travel.      Coley's charge.

To 102 miles tra-	To 237 miles at	Dols. Cts.
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vel, including tra-	fix cts. per. mile	18	09
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vel to the clerks,                      dols cts.

and justices, D. C. 14 22

6 18 Service by

Service by reading, 01 08

reading, 1 08 1-3 allow-

—ance as a-

Total 7 26 bove, 03 08

Total 18 38

For summoning the petit jury, June term, 1799.

Legal charge.	Separate travel	Coley's charge.	Assembly's
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To 75 mile travel at six cents per mile	78 miles at 6 cents per mile	D. C.	Dols. Cts.	allowance to Coley for
			15 87	

el at six cents per	per mile,	D. C.	H 87	Coley, for
milè,	D. C.	is	4 68	the above

is. 4 50 Service by the above services,

Service by reading.	72	D C.
One-third		22 22

reading.	72	One third allowance	39 43
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5	22	allowance		
		as above,	3	08

Total on the \_\_\_\_\_ Total of \_\_\_\_\_

Sum total \_\_\_\_\_ assembly's a- 8 48. Coley's  
vowed plan \_\_\_\_\_ charge dols. etc

Sum total	17	16	vowed plan.	35	56	charge, dols	38	cts.	27
leg. charge	17	16	exp. travel.	35	56				

Thus the statement flows from existing facts, that

the legal charge for the three veneries, would be 17

dollars, 16 cents; the charge upon the principle as

established by the assembly, would be thirty-five

dollars, forty-six cents, the charge by Mr. Coley, is

thirtyeight dollars, twenty seven cents; and the lum

allowed by assembly, is thirty nine dollars, twenty

three cents.

Hence in the first instance here stated it appears,

that the legal charge of Mr. Coley on the plan a-

vowed by the supreme court, would have been four

dollars, sixty eight cents, on the avowed plan of the

G

general assembly, it would have been eight dollars sixty cents ; Mr. Coley's charge as appeared by his own return, eight dollars, thirty one cents, which left due to him on the assembly's plan, 29 cents.

In the second instance, legal charge would have been seven dollars, twenty six cents, on the assembly's plan, eighteen dollars, thirty eight cents, Mr. Coley's charge, eighteen dollars, nine cents, which left due to him, twenty nine cents.

In the third instance, legal charge would have been five dollars, twenty two cents, separate travel, eight dollars, forty eight cents, Coley's charge, eleven dollars, eighty seven cents, which taking out the charge on the assembly's plan, together with the fifty eight cents false credit, exceeded the true calculation on the assembly's plan, two dollars, eighty one cents, and consequently if Mr. Coley was innocent upon the two first, he was criminal on their own scheme upon the third.

Agreeable to the preceding mode of calculation of legal fees, for serving the venires for grand and petit juries, in the nine organized counties in this state, during the ensuing septenary, it would form an aggregate of one thousand three hundred and ninety two dollars, ninety three cents, but if computed on the assembly's new plan, to exculpate Mr. Coley, exclusive of their imaginary estimates, it would amount to three thousand, two hundred and three dollars, six cents, surmounting the legal fees, calculated on the liberal rule avowed by the supreme court, 1810 dollars, 14 cents, or, 417 dollars, 22 cents more than double.

Which pernicious scheme of calculation, the council are persuaded, does involve in it, principles and consequences dangerous to the rights of the people, and having been fully adopted by our last legislature



we deem their conduct, in that instance, to have been contrary to justice, and therefore highly censurable.

In the second place it should be remembered, that the computations were made, and consented to by the house, without having the existing documents before them. Had the assembly so far complied with the order from the council of censors, as to have sent for the original venires, with Mr. Coley's fees and returns endorsed thereon, which constituted no inconsiderable part of the evidence, notified by the board to the house, as necessary to prosecute the impeachment to effect, they would have found that the venires for the petit jurors, issued for twelve only, and also the mode in which they were served, and consequently they would not have fallen into the egregious blunder, which they did, when they undertook to conjecture that possibly fifteen jurors were summoned instead of twelve.

The account allowed by the house for travel to the several clerks, and for extra travel to the same, being without data to form an opinion upon, we pass, with simply, observing, that the law makes no provision for any such service, and therefore the rational conclusion is, that the legislature in framing the laws, contemplated that the legal fees for summoning jurors, would amply compensate for all the duties requisite in serving venires, and more especially so, as the law is calculated to render the service of drawing juries easy, by allowing either of the select men of any town to answer all the purposes of a clerk.

How the treasurer's books could reflect light on the subject of the charge against Mr. Coley, the council of censors are at a loss to decide. It is a fact generally known, that the clerks of the supreme court, being paid for their service in drawing orders, in pro-

portion to the number drawn, will make out an order for the whole or for any part of an account presented to them : It is therefore optional with the creditor of the state to have his account divided into as many orders as he pleases, and to take out such orders at his pleasure ; which orders pass current from citizen to citizen in the payment of taxes. Mr. Coley might therefore have received the whole, or any part of his demand, and the treasurer's books, of consequence, be rendered no evidence in the case.

But the most singular features of the business appear, on reviewing the extraordinary transactions of the house before recited, in connection with a subsequent procedure, which took place only three days after the acceptance of the above report.

In consequence of the before unheard of construction of the fee bill, given by the house in the case of Mr. Coley, a motion was made for the appointment of a committee to revise it, and report to the house what alterations, if any, were necessary to be made in said bill. This committee reported,

*That having examined the law denominated the fee-bill, they were of opinion that it could not be so construed as to give an officer more than six cents per mile for actual travel, for serving any one process, altho several persons may be named in it, and the process served on them, except it be a forced construction.*

The acceptance of this report by the house, does not appear on the journals, but this board have strong reasons to believe that it was accepted, and that the clerk of the house hath been negligent in his duty in not recording the same, as four reputable gentlemen, members of the legislature, have appeared before them, and under oath declared, that it was accepted by a majority of the house, and that the speaker declared it a vote.

This being true it must naturally follow, that the sense of the house upon the right construction of the fee bill, was perfectly reversed in the course of three days, and Mr. Coley's charges, consequently, illegal and exorbitant.

The council of censors deeming it their indispensable duty, to lay before the people an accurate statement, of every infringement upon the constitution and laws which shall come to their knowledge, are constrained to communicate the proceedings of a military tribunal, lately holden in this state, which they consider subversive of the sound rights and privileges of the free citizens of Vermont.

On the 19th of September 1799, the captain General issued his orders for calling a general court martial, to convene on the 25th of September then next following, at Middlebury, in the county of Addison, which was afterwards postponed and ordered to be holden on the 30th of said September, at said Middlebury, for the trial of such persons as should be brought before them.

Agreeably to these General Orders, the officers therein named, met at the place appointed, on the day specified, when David Whitney, Major General of the third division of the militia [of Vermont, who had previously been put under an arrest, by the Captain General, was brought before said court marshal, and put on trial on the following articles of impeachment, or charges exhibited against him, which were lodged with the Captain General before the order for court martial issued.

*To his excellency Isaac Tichenor, esq. captain-general, and commander in chief in and over the state of Vermont.*

*David Whitney, major-general of the third division of the militia of this state, is impeached by the undersigned officers in the first brigade of said division, for unmilitary conduct in this, to wit. We accuse the said David*

Whitney, when majorgeneral as aforesaid, of having been guilty of the following crimes, and unmilitary conduct.

1st. For that the said David, when majorgeneral as aforesaid, in the most base and mean manner, debauched the wife of his friend, and thereby destroyed the peace and happiness of a respectable family.

2d. For that the said David when Majorgeneral, as aforesaid, meanly, cowardly, and tamely submitted himself, and without any resistance, to be taken and placed by two or three persons astride a pole, or rail, between two horses, with a rope round his neck holden by a boy, and in this situation permitted and suffered himself to be led and carried in open day, several miles, through the public streets of Addison.

3d. And for that the said David, when majorgeneral, as aforesaid, regardless of the dignity and propriety of conduct which became him, as an officer, did without just cause or provocation, insult, abuse and strike with his fist, an aged man, and late a respectable officer in the armies of the United States, and did refuse to make any restitution whatever, for the aforesaid injuries and abuse.

4th. And for that the said David when Majorgeneral as aforesaid, void of the spirit belonging to an officer, and a gentleman, hath at divers times been guilty of unmilitary conduct, in publicly assaulting and beating his wife, and in associating himself with divers riotous and disorderly persons, and abusing the good and peaceable citizens of this state.

All which said conduct of the said David, being Major General as aforesaid, is unmilitary, and against the form, force and effect of the thirty second section of an act regulating and governing the militia of this state.

*Wherefore your excellency is requested to arrest the said David, and order a court martial for the trial of said David, in the premises, agreeable to the act aforesaid.*

*We are with respect your Excellency's humble servants,*  
 JUSTICE BELLAMY, Major of the second  
 regiment in said brigade.

JOSIAS SMITH, Captain of Cavalry in said  
*Vergennes, Feb. 7th, 1799.* regiment.

Upon these articles of accusation the said David Whitney, was put on trial, and the sentence of the court martial was as follows, viz.

### GENERAL ORDERS.

*The Court martial which was holden at Middlebury, for the trial of Major General David Whitney, on the 30th ultimo, are of opinion, that the said David Whitney, while Major General of the third division of the militia of this state, was guilty of great unmilitary conduct. And therefore do adjudge and sentence, that the said David Whitney be removed from his said office of Major General, and incapable of holding any military commission under the authority of the state of Vermont, for and during the term of five years.*

*The Captain General has approved the sentence, and orders the court dissolved.*

By order of the Commander in Chief,  
 DAVID FAY, Adjutant General.

Windfor, October 23d, 1799.

The constitution of the state of Vermont, in the 17th article of the bill of rights, expressly declares,

*That no person in this state, can in any case be subject to law martial, or to any penalties or pains by virtue of that law, except those employed in the army, or the militia in actual service.*

But as it appears by the charges against said Whitney, that the allegations and sentence against him are predicated upon the 32d section of an act

regulating and governing the militia of this state, which is in the words following, viz.

Section 32. And it is hereby further enacted, *That every officer holding a commission in the militia, who shall be accused of any unmilitary conduct, neglect of duty, or disobedience of orders, or who shall when on duty appear or behave himself in an unofficer like manner; or shall wilfully injure those who are under his command, he shall be liable to be tried by a court martial, and if found guilty, to be sentenced by said court to be reprimanded in orders, or to be removed from office.*

The Council of Censors have duly and carefully examined the said section, and are of opinion, that the words or terms unmilitary conduct, neglect of duty, and disobedience of orders, must have an appropriate meaning, and relate to being legally called, or in the actual exercise of military functions, and cannot but by a forced construction, be wrested to warrant the commander in chief, or any other officer, in arresting and arraigning those in subordination to them, before a military tribunal, for any crimes or misdemeanors with which they may be charged, when not acting in a military capacity, or legally called thereto.

From hence it follows, that the Commander in Chief, and the members of the court martial, have assumed to themselves new and unheard of jurisdictional powers, by which they have broken down that sacred principle, which is now incorporated with the very essence of freedom, *That the military shall be kept under strict subordination to, and governed by the civil power*; by arraigning a citizen before an unconstitutional military tribunal, subjecting him to an illegal trial, and passing an ignominious martial sentence upon him, for crimes and misdemeanors, not one of

which are even alledged to have been committed while he was acting in a Military capacity, and for which of consequence he could only be amenable before a civil tribunal.

The council are therefore obliged to declare, that they esteem the proceedings in the case of Major general Whitney, to be a bold attempt, to extend the authority of the military over the civil power, and that it is truly alarming, as its ultimate tendency must appear to be, to overwhelm our civil jurisprudence, in the vortex of military tribunals, abridging the right of trial by jury, and giving the commander in chief an undue influence and authority over the liberties and privileges of his fellow citizens.

It is therefore the opinion of this board, that the order for, and trial of Major General David Whitney, by court martial, without alledging crimes or misdemeanors, committed while in the execution of, or specially called to the discharge of the duties of his military functions, are flagrant violations of the constitution and laws of this state, and that the conduct of the commander in chief, in arresting Major General David Whitney, ordering him before the court martial, and approving and publishing the sentence of the laid court martial, is highly censurable.

In our enquiry, "whether the public taxes have been justly laid and collected in all parts of this commonwealth," we are of opinion, that the act passed by the legislature in October 1797, laying a tax of one cent per acre, on all lands in this state indiscriminately, was unequal and unjust. It is a principle universally allowed, that property ought to be taxed in proportion to its real value, and annual income; and though it is impossible by any general rule to do

perfect justice, yet the mode that makes the nearest approach thereto is to be preferred. The taxing the wild and uncultivated mountains per acre, equal to the lands of the highest cultivation, or covered with elegant buildings, can bear no proportionable estimate, either in value or income. The statement annexed will shew the amount of taxes, which have been levied and not collected during the last septenary.

In our inquiries whether the laws have been duly executed, for the last septenary, we are happy to declare, that we find but few exceptions to their having been duly carried into effect.

The laws relating to weights and measures, which make it the duty of each county treasurer, and the selectmen of each organized town, to provide standards of weights and measures, for the use of such counties and towns, have not been complied with. Several counties and many towns have omitted to procure such standards.

It is evident that this neglect in its consequences, most sensibly affects community. The honest are liable to err, and the dishonest may pursue their evil practices with impunity. We conceive the fault which occasions this evil, rests principally with the several counties, in not furnishing their treasurer with the means of procuring standards.

The law provided to restrain gaming, a practice that tends to the mispending of time and property, and introduces every species of immorality and dissipation, we are unhappy to say a law so necessary in its nature, and beneficial in its designs hath, during the last septenary, been greatly disregarded. And that the law for the due observance of the Sabbath, hath not been duly observed and kept, but its binding ob-



ligations too often dispensed with by civil ministers on trivial pretences.

The laws for the punishment of profane swearing, we are sorry to be obliged to say, is little regarded. The ear of the moral citizen is frequently grated by profane oaths and horrid imprecations, and the sacred obligation of oaths taken in courts of justice is thereby greatly impaired. When existing laws are not executed but disregarded, it tends to destroy the energy of government, and bring the law into contempt. This evil appears to arise partly from the neglect of the duty of officers appointed to carry the law into execution, and partly from the deficiency of the law, in not sufficiently pointing out and defining the duty of interning officers.

In enquiring into the treasury department, we find the treasurer's books have been kept fair and regular, and his public accounts to have been duly audited, during the last septenary. As to the disposal of the public monies we find they have been paid out agreeable to appropriations made by law.

Complaints having been exhibited to this board, of mal conduct in the sheriff's department, we have thought it our duty to go into an impartial enquiry on the subject. Notwithstanding the measures taken by this board to procure and have laid before them certified copies from the several clerks of the supreme and county courts in this state, of the sheriff's returns of fees charged and sums allowed for serving venires of the grand and petit juries for the last septenary, they have not been able to procure said documents from the eastern counties, principally owing to the non-attendance of several of the members of the eastern district.

As far as they have been able to procure the necessary documents to investigate that subject, they find

that the sheriffs in Bennington county, for the last septenary, excepting in those cases which they have laid before a constitutional board, have not taken or charged greater fees than was allowed by law ; also in the county of Rutland, the sheriffs have not charged or received greater fees than were allowed by law - in the county of Chittenden we have not been able, for want of evidence, to ascertain the actual travel, in many instances, and therefore cannot say they have exceeded the law, but we find the charges much augmented since the year 1797. In the counties of Addison and Franklin, we find some instances irreconcilable with the principles of law, which will be laid before a proper board, and also the charges of the sheriffs for serving venires, in other instances, have been augmented considerably, for several of the last years.

We cannot close the subject without observing, that it is a principle of duty which we owe to you and ourselves, that has led us thus to speak our sentiments, with a freedom which we are not insensible will be disagreeable to some : but as we have been actuated solely by a desire of contributing our mite to the honor and felicity of the community ; conscious of no sinister or personal views in our enquiries, we submit our opinions to your candid consideration. And should we be so unhappy as materially to differ in sentiment from the respectable freemen of this commonwealth, still it will afford us consolation to reflect on the rectitude of our intentions, whilst we are sensible it is the common lot of human nature to be liable to err.

*By order of the Council,*

MOSES ROBINSON, President.

*Attest,* DAVID FAY, Secretary.

*An account of the arrearages of taxes, granted last septenary, viz Tax granted, Oct. 1792 to ditto granted 1798 inclusive, and also including the half penny land tax for raising thirty thousand dollars.*

Towns Names Delinquent.	Denom nation of Taxe.	Arrearage.	Remarks.
North-Hero	Two pence half penny tax 1792.	£. 17	
Ile la mort		2 11 6	
Fairfax		2 6 7	
Newhaven		7 6	
Middlebury		1 5 5	
		7 8 0	
	Halfpenny tax to raise 30,000 dols.		
South Hero	£. 21 13 0	0	Extended Do.
North Hero		2 5 0	
Ile la mort		9 7 10	
Alburgh,		2 0 10	
Colchester		4 16 0	
	£. 40 2 8		
	1793, tax of 2d.		
Barnard	£. 32 5 4		Extended
Craftsbury		2 13 10	
	£. 34 19 2		
	1794 tax of 2d.		
Bennington	£. 3 18 7		
	1795 tax of 2d.		
Fairhaven	£. 15 6		Extended and commissioners return must be paid by select- men.
Pawlet		3 5	
Rutland		2 11 10	
Wallingford		4 14 4	
Hartland		36 10 9	
Saunders		6 2	
Weybridge		1 9 10	
Danville		4 9 3	
Shelden		2 2 3	
St. Albans		2 6 6	
Burlington		18 6	
Moretown		1 2 6	
Fairlee		4 7 3	
	£. 61 8 0		

Same continued, with the amount of first page bro't over.

£. 147 16 5

Delinquent towns Names and denomination of taxes.	Dols. Cts.		Remarks.
1796, tax of four cents.			
Rutland	22	56	
Wallingford	103	95	Extended
Fairlee	8	12	Extended and non ested
Montpellier	2	79	selectmen liable
The ford	99	95	Extended and non ested, se-
Vershire	82	77	In ex'm. [lectmen liable
Leicester		96	
Milton	74	82	Extended.
Vergennes			
Burlington	4	64	
Colchester	7	74	
Highgate	2	14	
Ipswich	7	25	
Williston	4	40	
Milton	25	90	Extended.
Richford	4	8	
544		26	

## Cent tax of 1797.

Townshend	145	5	
Sommerfet	87	30	
Hubbardton	34	91	
Wallingford	165	45	Extended
Hartland	90	7	Do.
Norwich	15	30	
Reading	78	89	Extended.
Plymouth	131	88	Do.
Middlebury	14	96	
Salisbury	10	3	
Barre	44	7	
Chelsea	153	7	Extended.
Newbury	88	34	
Thetford	244	12	Extended and non ested
Tunbridge	41	83	selectmen liable.

Dislinque t towns Names,  
Denomination of taxes.

Remarks.

	Dis.	Cts.	
Amount bro't over	1246	07	
Cent land tax of '97 con.			
Duxbury	131	86	Extended
Morertown	119	54	Extended
Stowe	10	25	
Fairfax	16	87	Extended
Highgate	30	65	Do.
Beckwith	29	40	
Cabot	45	88	Do.
Danville	9	2	
Guildhall	2	58	
Peacham	53		Do.
Walden	44	53	Do.
Darby	69	52	Do.
On the unorganized towns in Rutland county.	224	39	Sheriff's hands.
	2,052	87	

1798.

Manchester	115	71	non-este selectmen liable.
Chittenden	34	62	Extended.
Harwich	18	22	Do.
Pawlet	276	74	Do.
Pittsford	125	32	
Poultney	55	12	Do.
Shrewsbury	26	40	Do.
Wallingford	113	27	
Bethel	10		
Bridgewater	65	60	
Baltimore	18	17	
Norwich	15	20	
Plymouth	28	59	
Springfield	9	98	
Woodstock	140	70	
Addison	6	30	
Newhaven	29	26	
Whiting	2	04	Extended.

Delinquent towns, &  
denomination of tax.

Remarks.

	Dls. Cts.		
Amount bro't over.	1093	24	
1798 tax continued.			
Bradford	110	26	
Newbury	163	22	
Randolph	231	35	Extented
Thetford	129	41	Do.
Tunbridge	138	21	Do.
Essex	77	99	Do.
Huntington	40	01	Do.
Richmond	20	80	Do.
<hr/>			
	2004	49	

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	£.	7	8	0		Dls.	Cts.
1792 tax.							
Halfpenny tax.	40	2	8		1796 Tax.	544	26
1793 tax.	34	19	2		1797.	2052	87
1794.	3	18	7		1798.	2004	49
1795.	61	8					
<hr/>						4601	62
Amount 1st p. £.	147	16	5		Equal to	491	40
					Total.	5093	02

In COUNCIL of CENSORS, February 4, 1800

*Resolved*, That nine hundred copies of the Address be printed, for the perusal of the people, and that the state printer be requested, to print the same immediately, and transmit them without delay, by express, to the sheriffs of the several counties, to be by them immediately transmitted to the town clerks of the several towns, for the use of the inhabitants.

The printer is requested to apportion the books to each county, suitably, and the sheriff's to apportion them to the town clerks, as equally as may be, both the printer and the sheriffs having respect to the number of inhabitants in the respective counties and towns; and that the said town clerks distribute said copies among the people of their several towns, in the most suitable method, so as to give general information; and also that this resolution be published in all the newspapers printed in this state.

*Resolved*, That the thanks of this Council be returned to the honorable Moses Robinson, esquire, for his services as president of this board, during their several sessions.

*A true Copy from the Journals of the Council of Censors.*

*Attest.*

DAVID FAY, Secretary.